



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: SEEMA, Inc.

File: B-277988

Date: December 16, 1997

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Kenneth B. Weckstein, Esq., Epstein Becker & Green, P.C., for Centennial Contractors Enterprises, an intervenor.

Col. Nicholas P. Retson, and Maj. Michael J. O'Farrell, Department of the Army, for the agency.

Mary G. Curcio, Esq., Andrew T. Pogany, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Discussions regarding protester's low price were adequate where agency did not specifically tell protester that its price was unrealistic, but did tell protester that its price was significantly below the government estimate and not supported by the proposal.

2. Agency decision to award to higher cost, higher technically rated offeror was proper where awardee's proposal was rated more advantageous under each nonprice factor, awardee's price was reasonable and supported by its proposal, and protester's price was deemed too low and not adequately supported.

DECISION

SEEMA, Inc. protests the award of a contract to Centennial Contractors Enterprises, Inc. under request for proposals (RFP) No. DABT57-96-R-0021, issued by the Department of the Army for facility maintenance and repair, and minor construction projects at Fort Eustis, Fort Monroe and Fort Story, Virginia. SEEMA argues that the agency miscalculated proposals, failed to hold meaningful discussions with the protester, and did not perform a proper price/technical trade-off.

We deny the protest.

BACKGROUND

The solicitation called for the award of a job order contract (JOC)¹ and stated that award would be made to the responsible offeror whose offer was the best overall value to the government. The solicitation provided that offerors would be evaluated against four equally weighted factors: management, past performance, small business participation, and price; subfactors and elements to be evaluated were listed under each factor. The solicitation included a unit price book which listed individual unit prices for all types of construction and repair work. The unit prices included labor, material, and equipment for completing the job orders. The Army used a factor of 1 to represent the unit prices. Offerors were required to propose a coefficient to be applied to the prices in the unit price book for work performed during normal and other than normal working hours, a non-prepriced rate for work not included in the unit price book and a bond factor to be applied to the project price to cover the cost of performance and payment bonds. The coefficients proposed by the offerors were required to include all costs for project management and supervision, overhead, profit, labor burden, contingencies and subcontractor profit and overhead.

The Army received and evaluated seven proposals, held discussions, and requested best and final offers (BAFO) from all seven offerors. The BAFOs were evaluated as follows:

Offeror	Total Weighted Tech. Score ²	Avg. Weighted Coefficient	Avg. Non-Prepriced Rate
Centennial	68.13	1.078	0.42
Offeror A	62.19	1.019	0.26
Offeror B	62.14	1.064	0.15
Offeror C	62.1	1.127	1.22
SEEMA	61.91	0.948	0.2
Offeror D	58.88	1.136	0.22
Offeror E	54.18	1.07	1.15

¹A JOC is an indefinite delivery, indefinite quantity (IDIQ) contract for accomplishment of small- and medium-sized real property maintenance and repair, and minor construction projects.

²The total weighted technical score attainable was 75 points.

The Army performed a price/technical trade-off and concluded that Centennial's proposal represented the best value, since it had no weaknesses and offered a price that was supported in its proposal. SEEMA's proposal was rated a lesser value despite its lower proposed price, since it had weaknesses under each nonprice factor, and its offered price appeared too low for adequate performance and the proposal did not explain how SEEMA would be able to perform at its proposed price. Based on these findings, the Army chose Centennial for award. This protest followed.

EVALUATION OF TECHNICAL PROPOSALS

Contractor Office Staffing

The Army found that under contractor office staffing, a subfactor of the management factor, Centennial's proposal was more advantageous than SEEMA's, which was found to contain weaknesses. The protester argues that the alleged weakness in its office staffing levels was "minuscule" in terms of the agency's technical scoring (Centennial received 23.38 points while SEEMA received 22.91 points) and that this evaluation subfactor only "concerns how many people will be available to push the paper to run the contract." In short, SEEMA argues that "more or less people [do] not automatically translate into more or less service."

The record shows the agency found that the protester did not have sufficient office staff to prepare and negotiate work orders. Further, SEEMA stated in its proposal that it would rely on "corporate staff" to assist its on-site staff during busy periods, but did not further identify the corporate staff at issue or state whether they would be dedicated to this effort. Nor did SEEMA indicate that it had a system in place to track the need for further staffing. [Delete]. Based on these findings, the Army reasonably found that Centennial's proposal offered a significant advantage in ensuring that task orders would be negotiated and carried out quickly and efficiently.

Small Business Participation

SEEMA acknowledges that Centennial's proposal was "marginally" superior to its own under the small business participation factor, but argues that this superiority was not significant.

The record shows that the Director of the Army Small and Disadvantaged Business Utilization (SADBU) program had denied an appeal by the Small Business Administration to set the procurement aside under the 8(a) program. SADBU required however, that the contracting officer make small business participation a significant consideration in the award decision. Thus, the solicitation specifically advised offerors that the aggressiveness of their small business participation plan and past compliance with small business participation goals would be evaluated.

The Army found that Centennial's proposal was more advantageous than SEEMA's under this factor because, while the protester merely committed to meeting the small and small disadvantaged business (SDB) market shares identified in the RFP, Centennial's plan committed to exceeding them, and therefore was rated more aggressive and comprehensive. Specifically, Centennial proposed to subcontract 95 percent of the work to small businesses, compared to SEEMA's 93 percent, and proposed to subcontract 20 percent to SDBs, compared to SEEMA's 12 percent. In addition, Centennial's proposal contained information showing that it had met or exceeded its goals in the past; SEEMA had been an SDB until recently and thus had little past performance history of meeting small business participation goals.

We disagree with SEEMA's characterization of Centennial's subcontracting goals as "marginally" superior. While its small business goal was only about 2 percent greater than SEEMA's, its SDB goal was two-thirds (67 percent) greater; the agency reasonably could view this difference in goals as significant for purposes of rating the aggressiveness of the two proposed plans. Further, while SEEMA believes it should not be penalized for its lack of experience meeting subcontracting goals (i.e., since until January 1997 it was an SDB itself), the RFP specifically advised that past compliance with subcontracting goals would be considered. Thus, whatever the reason for SEEMA's (or any other offeror's) lack of a track record, there is no basis for finding that the agency was precluded from recognizing Centennial's superiority in this area.

Past Performance

SEEMA argues that the Army improperly applied an undisclosed evaluation criterion--past performance on JOCs in general and on Army JOCs specifically--in determining that Centennial's past performance was superior to SEEMA's.

This argument is without merit. Centennial's proposal showed it performed 19 JOCs and that 9 of those were Army JOCs. In contrast, SEEMA's past performance consisted of 4 Air Force SABER contracts. The Army did not rate Centennial superior to SEEMA based on a JOC/SABER distinction;³ it considered performance on the SABER contracts equivalent to work on the JOCs. Rather, Centennial's superior rating was based primarily on the fact that it had performed

³Even had the evaluation been as SEEMA alleges, an agency, under generally worded experience/past performance criteria, properly may consider the extent to which an offeror has experience directly related to the work required by the solicitation. Systems Integration & Dev., Inc., B-271050, June 7, 1996, 96-1 CPD ¶ 273 at 4; Human Resource Sys., Inc.; Health Staffers, Inc., B-262254.3 et al., Dec. 21, 1995, 96-1 CPD ¶ 35 at 3. This being the case, we think the Army reasonably could consider the offerors' experience under JOC and Army JOC contracts.

substantially more of this type of contract than SEEMA--19 versus 4--and that this greater experience would minimize performance risk. There is nothing unreasonable in this conclusion.

PRICE EVALUATION

Alleged Unstated Evaluation Criterion

SEEMA argues that the Army improperly evaluated its proposal for price realism--finding that its proposed coefficient was unrealistically low--since price realism was not a stated evaluation factor. According to SEEMA, since the RFP only indicated that a price analysis would be performed, and a fixed-price (rather than a cost reimbursement) contract was to be awarded, price should have been evaluated only for reasonableness, to ensure it was not too high.⁴

We reject this argument. In our view, it was reasonable for the agency to consider the risk associated with low proposed prices here, where the RFP contained an evaluation factor, management, under which offerors were to be comparatively evaluated based, among other things, on the "understanding of the work tasks required." Where an RFP either expressly or implicitly encompasses offeror understanding in its evaluation factors, the agency's consideration of an unreasonably low price pursuant to a price analysis is unobjectionable, since it relates to the evaluation of the offeror's understanding. See ENCORP Int'l, Inc., B-258829, Feb. 21, 1995, 95-1 CPD ¶ 100 at 5-6; Mid-Atlantic Forestry Servs., Inc., B-217334, 85-2 CPD ¶ 279 at 10. Accordingly, we find no merit to the protester's argument that, in considering whether SEEMA's proposed coefficient was unrealistically low, the agency was applying an unstated evaluation criterion.

Realism of Coefficient Price

As to the substance of the agency's price analysis, SEEMA challenges the determination that its coefficient price was too low. However, the record shows that SEEMA's coefficient remained below 1 in its BAFO, and we find reasonable the agency's determination that SEEMA's proposal did not adequately explain how it would be able to perform at its proposed coefficient. In this regard, the proposal

⁴SEEMA also argues that, assuming a realism analysis was permissible, the Army failed to hold meaningful discussions because the agency did not specifically tell SEEMA that its price was unrealistically low. This argument is without merit. By informing SEEMA that its price was significantly below the government estimate and that its cost savings measures were not supported by data, the Army led SEEMA into the area of the deficiency, as required in order for discussions to be meaningful. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 7.

merely stated generally that the proposed price assumed a high work efficiency for strong team building with subcontracts and a familiarity factor for long-term contract involvement, as well as economies of scale and prompt payment discounts with subcontractors and suppliers. The proposal did not include any details or supporting data whatsoever showing how SEEMA would be able to perform the contract at its offered price, or explaining the specific efficiencies or economies of scale or how they would be realized. Without this explanation, the agency perceived a risk that SEEMA's price was too low for adequate contract performance. We see nothing unreasonable in this conclusion; SEEMA's disagreement with the Army, without any supporting details or data, is not sufficient to bring the evaluation into question. See Creative Management Tech., Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61 at 6.

PRICE/TECHNICAL TRADE-OFF

SEEMA challenges the price/technical trade-off, noting that there was only a 7-point difference in SEEMA's and Centennial's nonprice ratings, while Centennial's proposal is potentially \$5 million higher in price.⁵ SEEMA argues that the difference in the technical scores is not worth the additional cost.

Price/technical trade-offs may be made in deciding between competing proposals; the propriety of such a trade-off turns not on the difference in technical scores or ratings, per se, but on whether the agency's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP evaluation scheme. AAA Painting and Janitorial Contractors, Inc., B-270168, Feb. 13, 1996, 96-1 CPD ¶ 72 at 3. In this regard, evaluation scores are merely guides for the selection official, who must use his or her judgment to determine what the technical difference between competing proposals might mean to contract performance. R&A Technical Servs., B-270988, May 7, 1996, 96-1 CPD ¶ 238 at 4. The record shows that the Army chose Centennial's proposal over SEEMA's because Centennial's proposal was superior under each nonprice evaluation factor, had no disadvantages, and offered a coefficient that was justified and supported by the proposal. In contrast, the agency found that SEEMA's proposal, while acceptable, contained a number of weaknesses and a coefficient too low to ensure adequate performance; specifically, the Army believed SEEMA's low price could lead to additional administrative burdens as well as a risk of bill padding, the use of inferior materials or problems with subcontractors. Given the evaluation results, the Army's

⁵The Army explains that the actual difference in cost will be between \$208,000 and \$5.2 million, depending upon whether all options are exercised and how much work is ordered.

concerns, and the fact that the evaluation factors were weighted 75 percent nonprice, 25 percent price, the Army reasonably could determine that Centennial's superior proposal was worth its higher proposed cost.

The protest is denied.

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